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In The

Supreme Court of the United States

October Term, 1993

RENT STABILIZATION ASSOCIATION OF NEW YORK CITY, INC., THE DELANO VILLAGE COMPANIES, RIVERDALE GARDENS AND COLISEUM PARK APARTMENTS CO., and SMALL PROPERTY OWNERS OF NEW YORK,

Petitioners,

against

RICHARD L. HIGGINS, Commissioner of the NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, ROBERT WELLS, EVERETT QUINTON, GAY MEN'S HEALTH CRISIS, INC., JANET GOODMAN, KAIROS RENCHER and DISABLED IN ACTION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

BRIEF IN OPPOSITION

DENNIS J. SAFFRAN
NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL
One Fordham Plaza - 4th Floor
Bronx, New York 10458
(718) 563-5728

OLIVER C. KOPPELL
ATTORNEY GENERAL OF THE STATE OF NEW YORK
120 Broadway
New York, New York 10271
(212) 416-8019

Attorneys for Respondent New York State Division of Housing and Community Renewal

CULLEN S. McVOY
DANIEL E. KONIG
*RICHARD HARTZMAN
**Counsel of Record*
Of Counsel to Dennis J. Saffran

JERRY BOONE
Solicitor General

HARVEY M. BERMAN
Assistant Attorney General

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PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

BRIEF IN OPPOSITION

Certiorari should be denied as the questions raised lack sufficient constitutional dimension to warrant review.

STATEMENT OF THE CASE

A. SUCCESSION UNDER NEW YORK'S RENT LAWS

This is a facial takings challenge by owners of residential rental properties to regulations governing evictions under New York State's rent regulatory laws. The regulations apply where the tenant of record vacates a regulated apartment leaving members of the household behind. They prevent the eviction of those remaining who have a substantial connection to the apartment and a close relationship with the tenant, although they may not be related in the traditional sense as by blood, marriage or adoption.[1]

New York's rent regulatory system consists of two types of laws: rent control and rent stabilization.[2] The New

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[1] The amendments modified the State Rent and Eviction Regulations, 9 NYCRR 2100 to 2109 (rent control outside New York City), the Rent and Eviction Regulations for the City of New York, 9 NYCRR 2200 to 2210 (rent control within New York City), the Emergency Tenant Protection Regulations, 9 NYCRR 2500 to 2510 (rent stabilization outside New York City), and the Rent Stabilization Code, 9 NYCRR 2520 to 2530 (rent stabilization within New York City).

[2] Rent control and rent stabilization are both administered by DHCR pursuant to the Omnibus Housing Act of 1983. 1983 N.Y. Laws 403. DHCR is also responsible for the promulgation of regulations implementing the statutory protections. The complete text of the rent regulatory laws and the regulations promulgated thereunder may be found at N.Y. Unconsolidated Laws, McKinney's Book 65 §§ 8581-8700 (1987 and Supp).

York City Rent Control Law applies generally to units constructed prior to February 1, 1947, which have not become decontrolled by reason of a vacancy occurring after June 30, 1971. N.Y.C. Admin. Code, Sections 26-401, et seq. (McKinney's Unconsol. Laws). The Rent Stabilization Law applies generally to buildings containing six or more units constructed between February 1, 1947 and January 1, 1974, and to units which were previously subject to the Rent Control Law but were decontrolled upon vacancy. N.Y.C. Admin. Code, Sections 26-501, et seq. (McKinney's Unconsol. Laws) In general, buildings constructed after January 1, 1974 are not subject to any form of rent regulation.[3]

Both systems have mechanisms for regularly determining reasonable rent increases to enable owners to cover rising costs of maintaining their buildings and to afford them a reasonable return on their investment.[4] Both systems also allow the withdrawal of units from the rental market under a variety of circumstances, such as for owner occupancy, business use, demolition, and cooperative or condominium conversion.[5] They also provide remedies for rent increases

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[3] Both systems were established pursuant to State enabling legislation; the State Emergency Housing Rent Control Law, McKinney's Unconsol. Laws, §§ 8581-8597; and the Local Emergency Housing Rent Control Act, McKinney's Unconsol. Laws, §§ 8601-8617. There are also two parallel systems of rent regulation for areas of New York State outside of New York City. In general, the same principles apply to the systems inside and outside New York City.

[4] As to rent stabilization, *see* N.Y.C. Admin. Code § 26-510 (b). As to rent control, *see* N.Y.C. Admin. Code § 26-405.

[5] As to evictions for owner occupancy, *see* 9 NYCRR 2524.4(a) and 9 NYCRR 2204.5; as to evictions for purposes of withdrawing

(continued...)

based on hardship.[6]

Succession has always been an essential element of New York's rent regulatory scheme. This is because the goal of protecting the state's citizenry from dislocation cannot be accomplished by solely preserving the leasehold interests of the named tenant. Where the named tenant vacates and leaves behind members of the household who would suffer equally from dislocation, additional measures are needed to protect their home.

Under rent control, succession rights were long based on a broad regulatory definition of "tenant" which included persons "entitled to the possession, use or occupancy", 9 NYCRR 2200.2(o), or specific provisions permitting succession for members of the tenant's "family who ha[ve] been living with the tenant". 9 NYCRR 2204.6(d). The essential test was whether the occupant had a sufficiently close relationship with the named tenant and a substantial connection to the apartment. In *Braschi v. Stahl*, 74 N.Y.2d 201, 544 N.Y.S.2d 784 (1989), the New York Court of Appeals ruled that the term family in the rent control regulations should not be restricted to persons related by blood, marriage or adoption, but should extend to individuals whose relationship with the former tenant bore the characteristics of emotional and financial commitment and interdependence which are typical of family relationships.

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[5](...continued)
from rental market, *see* 9 NYCRR 2524.5 (a)(1) and 9 NYCRR 2204.9; as to evictions for purposes of demolition, *see* 9 NYCRR 2524.5(a)(2) and 9 NYCRR 2204.8.

[6] As to rent stabilization, *see* 9 NYCRR 2522.4 (b) and (c). As to rent control, *see* 9 NYCRR 2202.7 and 9 NYCRR 2202.8.

Following *Braschi*, the Division implemented its principles by promulgating the challenged regulations. The regulations amended the regulations for both rent control and rent stabilization.[7] The regulations serve to protect from eviction individuals whose relationship with the former tenant was characterized by the specified indicia of emotional and financial commitment and interdependence, including senior citizens living together on fixed incomes, combined single parent households, permanent relationships for care of a minor or disabled person, as well as gay and unmarried heterosexual couples.

Those who claim succession rights must show both a qualifying relationship and a minimum period of co-residency. They must show a relationship of "emotional and financial commitment and interdependence" based on factors such as longevity of relationship, intermingling of financial assets and obligations, sharing of household expenses and responsibilities, joint social and family activities and mutual arrangements for family care and provision of necessities. They must also show that they have lived in the apartment as their primary residence since the inception of the tenancy or commencement of the relationship with the tenant, or for a period of two years, or one year for senior citizens and disabled persons.

The numerous cases reported since the regulations were adopted show that the co-residency requirements effectively screen out persons who have an insufficient connection to the

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[7] Before the amendment, the Rent Stabilization Code, Sections 2523.5(b)(1) and 2520.6(o), afforded succession rights to spouses, children, parents, siblings, stepparents, stepchildren, grandparents, grandchildren, mothers-in-law, fathers-in-law, daughters-in-law, sons-in-law, uncles, aunts, nieces and nephews.

premises.[8] Reported cases also show that claims are often denied for lack of indicia of significant personal, financial and legal commitment,[9] and are only accepted where the standards

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[8] *Gottlieb v. Licursi*, 191 A.D.2d 256, 595 N.Y.S.2d 17 (1st Dept. 1993); *Quiala v. Laufer*, 180 A.D.2d 31, 584 N.Y.S.2d 786 (1st Dept. 1992); *Greenberg v. Coronet Properties Co.*, 167 A.D.2d 291, 562 N.Y.S.2d 33 (1st Dept. 1990); *Global Mgt. v. Engracia*, N.Y.L.J. Feb. 21, 1991, p. 27, col. 6 (App. Term, 2nd and 11th Jud. Dist.); *Wonko Realty Corp. v. Estate of Mary Dreisch*, 150 Misc.2d 1046, 572 N.Y.S.2d 276 (Civ. Ct., N.Y. Co., Scott, J.); *Connelly v. Martin*, N.Y.L.J., Feb. 20, 1992, p. 22, cols. 5-6 (App. Term, 1st Dept.); *New York University v. Filliatre*, N.Y.L.J., Jan. 22, 1991, p. 24, col. 5, (App. Term, 1st Dept.); *Haroust Corp. v. Chin*, N.Y.L.J., Apr. 22, 1993, p. 23, cols. 3-4 (App. Term, 1st Dept.); *Liant Record Co. v. Newman*, N.Y.L.J., June 7, 1993, p. 29, cols. 1-2 (App. Term, 1st Dept.); *Lincoln Terrace Associates v. Sorrentino*, N.Y.L.J., June 10, 1993, p. 25, col. 6, p. 26, col. 1 (App. Term, 1st Dept.); *Parcel 242 Co. v. Heitner*, N.Y.L.J., Aug. 29, 1990, p. 21, cols. 5-6, p. 22, cols. 2-3 (Civ. Ct., N.Y. Co., Wendt, J.); *LF One Company, Inc. v. Bobrowski*, N.Y.L.J., Dec. 28, 1990, p. 21, cols. 3-4 (App. Term, 1st Dept.); *IDF Limited Partnership v. Leahy*, N.Y.L.J., Aug. 4, 1992, p. 21, cols. 4-5 (App. Term, 1st Dept.).

[9] *GSL Enterprises, Inc. v. Goldstein*, N.Y.L.J., July 13, 1993, p. 22, cols. 2-3 (App. Term, 1st Dept.)(the tenant's girlfriend, who had lived in the apartment as a primary resident for two and one half years, nevertheless failed to meet the standards of the regulations for a qualifying relationship); *Ramirez v. Lopez*, N.Y.L.J., Nov. 14, 1991, p. 22, cols. 3-4 (App. Term, 1st Dept.); *Seminole Realty Co. v. Greenbaum*, N.Y.L.J., Apr. 8, 1993, p. 23, col. 4 (App. Term, 1st Dept.); *Allerton Associates v. Shannon*, N.Y.L.J., Feb. 26, 1993, p. 21, col. 6, p. 26, col. 6, p. 27, cols. 1-2 (Civ. Ct., Bronx Co., Fiorella, J.); *Park Holding Co. v. Power*, N.Y.L.J., Jan. 17, 1992, p. 26, col. 1 (App. Term, 1st Dept.).

are amply met.[10]

B. PROCEEDINGS BELOW

The Division first promulgated the regulations pursuant to New York State's emergency rule-making procedures on November 9, 1989. Such procedures allow regulations to be implemented on a temporary basis pending the promulgation of permanent regulations following periods for public notice and comment. On November 13, 1989, petitioners obtained an order from the New York Supreme Court preliminarily staying implementation of the emergency regulations. In support of their application for a stay, petitioners argued that the regulations were contrary to various state statutes, were adopted in excess of the Division's statutory authority, and effected an unconstitutional taking of property without just compensation.

While the litigation was pending, the Division proceeded with the process required to promulgate the regulations on a permanent basis. The regulations were published in the State Register and became effective on April 4, 1990. Petitioners then obtained an order from the New York Supreme Court extending the previous stay to the permanent regulations.

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[10] *Strassman v. Estate of Daniel Eggena*, 151 Misc.2d 638, 582 N.Y.S.2d 899 (App. Term, 1st Dept. 1992); *Lerad Realty Co. v. Reynolds*, N.Y.L.J., Aug. 29, 1990, p. 22, cols. 5-6, p. 23, col. 1 (Civ. Ct., N.Y. Co., Kramer, J.); *43-45 W. 129th St. HDPC v. John & Jane Doe*, N.Y.L.J., Mar. 2, 1992, p. 25, col. 6, p. 31, cols. 2-4 (Civ. Ct., N.Y. Co., Gans, J.); *Seminole Hous. Corp. v. Leone*, N.Y.L.J., May 24, 1990, p. 27, cols. 3-4, (App. Term, 2nd and 11th Jud. Dists.).

The Division then filed a notice of appeal which, under New York law, automatically stayed the order of the Supreme Court pending prosecution of the appeal. Upon prosecution of the appeal, the Appellate Division of the Supreme Court issued a unanimous order vacating the injunction. The opinion of the court considered all of the petitioners' arguments against the validity of the regulations and found them to be without merit. *Rent Stabilization Association v. Higgins*, 164 A.D.2d 283, 562 N.Y.S.2d 962 (1st Dept. 1990). With respect to petitioners' constitutional arguments, the court noted that the physical taking argument lacked merit because the regulations did not fundamentally change the nature of the rent regulatory system as to authorize permanent occupation of the sort which traditionally has been held a taking, but rather were similar in nature to regulations which had long been upheld involving restrictions upon existing tenancies where landlords had voluntarily put their properties to use for residential housing. 562 N.Y.S.2d at 970. The court also rejected the petitioners' regulatory takings argument noting that the petitioners had not shown that the regulations prevented owners from obtaining a reasonable return on their property, and also noting that the regulations substantially advanced the legitimate state interest of preventing the eviction of individuals with substantial ties to the apartment and to the former tenant of record. 562 N.Y.S.2d at 971.

Following the opinion of the Appellate Division, the parties returned to New York Supreme Court seeking summary judgment in their favor. In granting the Division's summary judgment motion, the court noted in relevant part that petitioners' constitutional arguments were, at best, speculative. Petitioners then appealed once again to the Appellate Division which affirmed the judgment. In its decision, the Appellate Division reconsidered the takings issue, reviewed the most recent decisions from this Court, and adhered to its prior conclusion that the regulations were valid. *Rent Stabilization*

Association v. Higgins, 189 A.D.2d 594, 592 N.Y.S.2d 255 (1st Dept. 1993).

Upon petitioners' appeal, the New York Court of Appeals also upheld the regulations. In the course of its opinion, the court rejected petitioners' claim that the regulations were unconstitutional on their face. The Court of Appeals rejected the petitioners' physical taking argument noting, among other things, that the regulations did not affect the owners' right to convert rent-regulated properties to other uses, did not compel owners to subject their property to unintended uses, and were similar in nature to laws upheld by this Court eliminating an owner's unfettered discretion to reject particular tenants. *Rent Stabilization Association v. Higgins*, __ N.Y.2d __, 608 N.Y.S.2d 930, 936-7. The court also rejected petitioners' argument that the regulations effected a regulatory taking on their face noting, among other things, that the regulations did not affect the owners' right to receive the regulated rents, unchallenged as a reasonable return, and that the regulations substantially advanced the legitimate governmental objective of preventing unwarranted evictions and alleviating homelessness. 608 N.Y.S.2d 637-8.

REASONS WHY THE PETITION FOR CERTIORARI SHOULD BE DENIED

Petitioners admit that this is a facial challenge, Pet. for Cert. 22; it does not involve any particular case in which the regulations were applied. Yet, the questions presented by petitioners fall far short of the standards for mounting a facial attack, which requires a showing that *no* set of circumstances exist under which the regulations would be valid, *Reno v. Flores*, 507 U.S. __, 113 S.Ct. 1439, 1446, 123 L.Ed.2d 1, 16 (1993), and do not merit the granting of certiorari. In fact, the Court has recently reviewed and rejected challenges to enactments similar to those in the case at bar. Review of petitioners' questions would therefore do little, if anything, to further jurisprudence in this area.

Petitioners' first claim is that the regulations do not substantially advance a legitimate state interest as required by *Nollan v. California Coastal Commission*, 483 U.S. 825, 97 L.Ed.2d 677 (1987). However, this claim is based on a gross distortion of the ends sought to be accomplished by the regulations.

Petitioners would have the Court believe that the purpose of the regulations is to resolve a low vacancy rate, homelessness, poverty, and the AIDS crisis, and argue that the regulations are not sufficiently tied to those concerns. However, the record is clear that their purpose was not so limited. The purpose of the regulations was to address the overarching problem of preventing unwarranted evictions. The official filings of the Division pursuant to the State's Administrative Procedure Act read as follows with respect to the amendments to the Rent Stabilization Code:

8. *Purpose of the emergency rule*:

To clarify and assure the lease renewal succes-

> sion rights of a rent stabilized tenant's qualified family member, including a non-traditional family member who resides with the tenant in the housing accommodation as a primary resident, when the tenant permanently vacates the housing accommodation.

In official filings responding to public comments that the regulations constituted a taking without just compensation, the Division also made clear that the purpose of the challenged regulations was the prevention of unwarranted evictions. In relevant part, the Division responded that: "[t]he regulations clearly advance legitimate public interests in preventing unwarranted evictions and displacement of residents already in place..."

While the Division did indeed refer to the low vacancy rate, homelessness, poverty, and the AIDS crisis, such references were not made to suggest that the regulations were intended to solve these problems. Rather, they were cited as examples of conditions which emphasized the need for extending protection from eviction in order to prevent additional displacement and dislocation. That petitioners are forced to misstate the purpose of the regulations in order to argue that they do not substantially advance their purpose only serves to confirm that petitioners cannot present a real facial challenge based on the nexus between the regulations and their intended purpose.

There can be no doubt that a close nexus exists between the regulations and their intended purpose. The regulations do more than "substantially advance" their purpose of preventing unwarranted evictions; they do so in a direct and immediate manner by protecting residents of rent-regulated apartments from being thrown out of their home upon the death or departure of the tenant. Petitioners argue that the Court of

Appeals did not apply the "heightened scrutiny" test in reviewing the regulations, but instead paid lip service to it by engaging in a cursory, one sentence examination of the nexus between the regulations and their stated purpose. Pet. for Cert. 17. However, the nexus is so patently obvious that no further analysis is warranted. As the court stated: "People who would, absent the regulations, be threatened with eviction from their homes may now have the right to remain." There is no need for the Court to review this entirely sensible analysis.

Petitioners' second claim is that the regulations place burdens upon owners that should be borne by society as a whole. However, this claim also does not merit review as the Court has repeatedly noted that "'states have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails.'" *Pennell v. City of San Jose*, 485 U.S. 1, 12 n.6, 99 L.Ed.2d 1 (1988) [quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982)]. And in its most recent takings decision in *Concrete Pipe and Products of California, Inc., v. Construction Laborers Pension Trust for Southern California*, __ U.S. __, 113 S.Ct. 2264, 2291, 124 L.Ed.2d 539, 579 (1993), this Court once again emphasized that "mere diminution in value of property, however serious, is insufficient to demonstrate a taking."

Through the years, federal, state and local governments have, in response to significant housing shortages, enacted legislation declaring the existence of a serious public emergency and restricting the ability of landlords to raise rents and evict tenants. This Court, as well as others, has consistently rejected constitutional challenges to such restrictions. *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170 (1921); *Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922); *Loab Estates,*

Inc. v. Druhe, 300 N.Y. 176, 180 (1949); *Fresh Pond Shopping Center, Inc., v. Callahan*, 464 U.S. 875 (1983); *Troy v. Renna*, 727 F.2d 287 (3rd Cir. 1984); *Nash v. City of Santa Monica*, 688 P.2d 894 (Cal. Sup. Ct. 1984), *appeal dism. for want of federal question*, 470 U.S. 1046 (1985). There is nothing in petitioners' papers that warrants revisiting these precedents.

In this context, petitioners also assert that this case presents an opportunity for this Court to resolve issues of tenant hardship and landlord property rights which were left unresolved in *Pennell*. However, this claim is imaginary at best. The issue *Pennell* left unresolved as premature was the constitutionality of an ordinance which permitted the reduction of the rent below an objectively reasonable level based on tenant hardship. 485 U.S. at 9-10. This issue is not remotely present herein for the regulations on their face do not prevent owners from earning a reasonable return.[11] Accordingly, and especially given the facial nature of petitioners' challenge, the second takings claim raised by petitioners does not warrant granting of certiorari.[12]

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[11] In fact, even the dissenting opinion in *Pennell* agreed that (apart from the single feature under attack in *Pennell*) where a housing shortage enables owners to charge excessive rents and reap unique benefits from the situation that produces economic hardship, singling them out to relieve it may not be regarded as unfair. *Pennell*, 485 U.S. at 20 (Scalia, J.).

[12] It should be noted that to the extent that petitioners' arguments might be read to suggest that some owners may be prevented from earning a reasonable return as a result of the regulations, such a claim does not meet the standards required to mount a facial attack, as facial challenges cannot be based on the extent to which the regulations might affect some, but not all, owners. *Yee v. City of Escondido*, 503 U.S.

(continued...)

Petitioners' third claim is that the regulations reduce the owners' reversionary interest by restricting their ability to evict qualified family members upon the departure of the tenant of record. However, this Court has made it clear that takings jurisprudence focuses on the nature of the owner's property rights as a whole, not on each discrete segment or strand, *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497, 94 L.Ed.2d 472, 496 (1987), and owners are still likely to profit from their business venture despite the possibility of a reduction of their reversionary interest. As a whole, owners are engaged in the business of renting regulated real estate, not emptying buildings. Thus, as a rule, the only benefit they receive is a limited rent increase that may be charged to a tenant following a vacancy. The possible loss of this benefit is minimal, generally amounting to less than .045% of a building's rent roll (Record on Appeal Below 659), and does not raise constitutional concerns.

In the recent decision in *Concrete Pipe*, the Court reaffirmed the principle that property could not be divided into separate portions in order to establish a taking. __ U.S. at __,

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[12](...continued)
__, 112 S.Ct. 1522, 1532, 118 L.Ed.2d 153, 169 (1992). Furthermore, such an attack requires the participation as a party of each individual owner who claims to be adversely affected and must be based on "dollars and cents" proof rather than broad platitudes and theoretical predictions. *Rent Stabilization Association of New York v. Dinkins*, 5 F.3d 591, 596-597 (2d Cir. 1993). Moreover, such takings claims are premature unless the challengers have pursued available remedies for deriving economic benefit from their property. *Williamson Planning Commission v. Hamilton Bank*, 473 U.S. 172, 87 L.Ed.2d 126 (1985); *Hodel v. Virginia Surface Mining & Reclamation Assn*, 452 U.S. 264, 69 L.Ed.2d 1 (1981). Under the rent laws, individual owners may well be entitled to seek rent increases based on hardship.

113 S.Ct. at 2290, 124 L.Ed.2d at 577-578. Moreover, the Court has made it clear that loss of future profits, at least in the absence of an interference with an owner's legal right to dispose of his land, does not constitute a taking. *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1, 15, 81 L.Ed.2d 1, 14 (1984); *Andrus v. Allard*, 444 U.S. 51, 66, 62 L.Ed.2d 210, 223 (1979). Accordingly, in light of these precedents, petitioners' third takings claim also lacks sufficient constitutional dimension to warrant that certiorari be granted.

Lastly, petitioners raise the claim that the challenged regulations effect a physical taking. However, in *Yee*, 503 U.S. at __, 112 S.Ct. at 1522, 118 L.Ed.2d at 153, this Court held that there was no physical taking in a case involving greater interference with property interests of owners than the restrictions imposed by the instant regulations. The Court reasoned that government effects a physical taking only where it requires owners to submit to the occupation or invasion of their property, and that where owners voluntarily place their property on the rental market, government may limit rents and require landlords to accept complete strangers as tenants without automatically having to pay compensation. 503 U.S. at __, 118 L.Ed.2d at 172.

As in *Yee*, the challenged regulations do not require owners to place their property on the rental market. Moreover, the regulations are more favorable to owners than those in *Yee*, as they do not require owners to accept complete strangers as tenants but simply protect from eviction members of a tenant's household who have resided at the premises for significant periods of time and who can establish the requisite emotional and financial commitment and interdependence with the tenant through rigorous and objective criteria.

Petitioners would distinguish this case from *Yee* on the basis that the owners in *Yee* could unilaterally choose to go out of the rental business, while they allegedly could not do so

under New York's rent laws. However, in making this allegation, petitioners neglect to note the conditions that the owners in *Yee* were required to meet before changing the use of their property, and also fail to inform the Court as to the many grounds that owners have available to recover their properties under New York's rent laws notwithstanding the instant regulations.

Under the ordinance upheld in *Yee*, owners had to meet various conditions and secure discretionary approvals before they could in fact change the use of their land. Owners were required to give six or twelve months notice to residents and to prepare an impact report, and could be required to pay relocation benefits, or even purchase the used mobile homes at "in place value." Depending upon the new use proposed and applicable zoning, conversion could also require preparation of an environmental impact report, a change in zoning, amendments to the local general plan, and approval of a subdivision map. *Yee*, 503 U.S. at __, 118 L.Ed.2d at __; *Yee* Reply Brief for Petitioners 10, n.6. Under New York's rent laws, owners may refuse to offer renewal leases where they require premises for business purposes or, under certain circumstances, to recover possession for personal use and occupancy. Owners may also withdraw from the rental market, under certain circumstances, if they wish to demolish a building. In light of these available remedies, and given the facial nature of their challenge, petitioners' physical takings claim also fails to warrant a grant of certiorari.

The petition fails to present any important constitutional question which should have been but has not been settled by this Court. Nor does it establish any conflict with decisions of other federal or state appellate courts which require resolution by this Court.

CONCLUSION

For the foregoing reasons the petition for certiorari should be denied.

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Bronx, New York

DENNIS J. SAFFRAN
One Fordham Plaza - 4th Floor
Bronx, New York 10458
(718) 563-5728

OLIVER C. KOPPELL
ATTORNEY GENERAL OF
THE STATE OF NEW YORK
120 Broadway
New York, New York 10271
(212) 416-8019

Attorneys for Respondent New York State Division of Housing and Community Renewal

CULLEN S. McVOY
DANIEL E. KONIG
*RICHARD HARTZMAN
*Counsel of Record
Of Counsel to Dennis J. Saffran

JERRY BOONE
Solicitor General
HARVEY M. BERMAN
Assistant Attorney General